

REBATES UNDER NEW HAMPSHIRE INSURANCE LAW

Rebates and Anti-rebating Laws

Anti-rebating laws protect consumers and provide market stability by prohibiting insurers and producers from directly or indirectly offering inducements to purchase insurance to some but not all policyholders.

Rebates are “side deals” that are not included within the terms of the insurance policy and therefore are not guaranteed or available to all policyholders. Reducing premiums is a well know type of rebating, but giving or promising “any other thing of value whatever” is also considered a rebate under the language of RSA 402:39, the New Hampshire anti-rebating law.

Rebates can result in unfair market advantage for those insurers or insurance producers that can afford to or are willing to offer the most generous or desirable rebates. In addition, there is the potential for market instability as rebates may result in consumers shopping for new coverage midterm or upon renewal in order to benefit from bigger and better rebate offers.

Anti-rebating Laws

RSA 402:39 prohibits an insurance company or producer from giving anything of value as an inducement to purchase insurance, unless the thing of value is specifically referenced in the policy itself. Knowingly giving (directly or indirectly) a rebate as an inducement to purchase insurance is also an unfair trade practice in violation of RSA 417:4, IX (a).

Exceptions to Anti-Rebating Law- Value Added Services, Activities and Items

RSA 402:41 lists some limited exceptions to New Hampshire’s anti-rebating law. Of special interest to producers are the exceptions for “value added” services, activities or products offered or provided without a fee, or at a reduced fee. These services, activities or products must be related to the coverage provided by the insurance policy. In addition, the services, activities or products must be:

- (1) Clearly identified and included in the insurance policy or brokerage agreement or
- (2) Directly related to the producer’s servicing of the insurance policy or brokerage agreement, or
- (3) Offered or undertaken to provide risk control for the benefit of the insured.

Value added services, activities or products include such things as risk assessments, risk control tools, claims assistance, legislative updates or administration consulting.

REBATES UNDER NEW HAMPSHIRE INSURANCE LAW

Exceptions to Anti-Rebating Law- Promotional Items

Many questions have been presented to the Department from producers on the giving of promotional items. Generally promotional items like calendars, gift cards, thank-you gifts and the like will not fall under the “value added service” exemptions of RSA 402:41.

In addition, promotional items are a form of advertising which is by definition an attempt to influence consumers to purchase insurance from the producer. Because RSA 402:39 prohibits producers from giving anything of value to induce a consumer to purchase insurance, it is possible that giving promotional items could be considered unlawful rebating under RSA 402:39.

However, there must be some recognition that anti-rebating laws do not prohibit an insurance company or producer from advertizing products and services. The Department has therefore interpreted RSA 402:39 to permit certain promotional items if the promotional items do not truly act as “inducements” to consumers to purchase insurance from a producer or insurance company.

However, a producer must comply with two requirements when offering promotional items. First, the item must be a tangible item or gift card (not cash) and of minimal value. The Department has determined that minimal value is a fair market value of **\$10.00 or less**. Items of more than minimal value can act as an inducement to the consumer to purchase insurance and are not permitted.

Second, the promotional item cannot be tied to the purchase of insurance. This means that the promotional item must be offered to a consumer whether or not the consumer purchases a policy. Generally the item will be offered when the consumer submits a non-binding quote or as a give-away in the office or a trade show setting. If the item is offered only if the consumer purchases the policy, the consumer may feel pressured to purchase the policy in order to receive the item. A promotional item offered with “no-obligation” is unlikely to cause the consumer to be induced to purchase a policy and therefore is not considered a rebate under the law.

REBATES UNDER NEW HAMPSHIRE INSURANCE LAW

The following examples are provided to give further guidance in determining whether an item or service is an illegal rebate

Q: A producer tells a potential client that the producer will make a \$5 donation to the charity of the consumer's choice if the consumer will sit with the producer and discuss insurance options or request a quote. Is this an illegal rebate?

A: No, the donation is not tied to the purchase of a policy and is worth less than \$10. It is not an illegal rebate.

Q: A producer tells a potential client that the producer will make a \$5 donation to the charity of the consumer's choice if the consumer purchases a policy. This donation is not mentioned in the policy. Is this an illegal rebate?

A: Yes, the donation is tied to the purchase of the policy, it is not exempt under RSA 402:41 and is an illegal rebate because the donation is tied to the purchase of a policy.

Q: A producer gives a potential client a key chain and flashlight (combined fair market value under \$10) when the consumer approaches the producer's booth at a convention. The consumer picks up information about products offered and ultimately purchases an insurance policy from the producer. Are the flashlight and keychain an illegal rebate?

A: No, the items given were not tied to the purchase of a policy. The consumer could take/was given the items regardless of whether or not the consumer purchased a policy. The items are worth \$10 or less. This is not a rebate.

Q: A producer offers to give \$7.00 to a current client because the policy offered through the producer costs \$7.00 more upon renewal than another policy available to the consumer. Is this an illegal rebate?

A: Yes, the \$7.00 is cash and is not a promotional item. It is also tied to the purchase of the policy. It is not exempt under RSA 402:41. This is an illegal rebate.

REBATES UNDER NEW HAMPSHIRE INSURANCE LAW

Q: A producer is offering a \$35 gas card to any consumer who will request an auto quote. Is this an illegal rebate?

A: Yes, although the gift is not tied to the purchase of insurance, the amount given is over the \$10 limit and could cause the consumer to feel an obligation to purchase the policy. The gas card acts as an inducement and is therefore an illegal rebate.

Q: A producer selling group health insurance tells his customer that if she purchases insurance through the producer, the producer will throw in a free website that will provide her covered employees with information concerning claims, benefits ...etc. Is this an illegal rebate?

A: No, the website is a service related to the policy and to the producer's servicing of the policy and is permitted under RSA 402:41. It is not an illegal rebate.